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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/918,096	07/30/2001	Maurice Clarence Kemp	MORN-0011 (108347.00022)	2612
25555	7580	10/23/2003	EXAMINER	
JACKSON WALKER LLP 2435 NORTH CENTRAL EXPRESSWAY SUITE 600 RICHARDSON, TX 75080			PRATT, HELEN F	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 10/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/918,096	KEMP ET AL.	
	Examiner	Art Unit	
	Helen F. Pratt	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is **non-final**.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) 14-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 33-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of claims 1-13, 33-43 in the Paper dated 9-8-03 is acknowledged.

Claim Rejections - 35 USC § 112

Claims 1, 4, 12, 13, 33, 37, 41 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: any steps, which as in claims 1, 4, 12, 13, 33, 37, of the "intended use" include treating the nutriment with heat in order to inactivate a pathogen, nor is there any step as in claim 41 of putting the nutriment in a container so that it can have a shelf life.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Complete course in Canning, p. 238 (Canning)^{and 478+479} or Kemp (WO 00/48469).

Canning discloses a method of treating low-acid products with an acid. The reference discloses that it would be impractical to sterilize low-acid products in boiling water unless the product is acidified (page 238, 3rd para. under Acidification). Also, the

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reference discloses on page 478⁹ under "aiding preservation" that shorter times can be used for sterilization of foods when acidulents are used. It is seen that the rate of thermal inactivation of a pathogen in a nutriment (food) has been shown, since as above, less time is needed to sterilize when an acid is used thereby increasing the rate of thermal inactivation of a pathogen as in claim 1. The reference discloses particularly, tomatoes, as in claim 3 (page 479^{2nd} para under "Aiding Preservation").

Kemp et al. disclose a method for preserving a nutriment as in claims 1 and 3 by combining the nutriment with a mixture of AGIIS and an additive (page 62, claims 54 and 55). The intended use of increasing the rate of thermal inactivation of a pathogen in a nutriment is seen to have occurred, as the method is the same.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 4-13, 33-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Complete Course in Canning, p. 238,^{478, 479} (Canning) as applied to claims 1 and 3 above, and further in view of Kemp et al. (WO 00/48469).

Claims 2 and 4, 5 further require that the acidulant is made of particular ingredients as in 2(a). The reference to Kemp et al. disclose the particular compounds on page 11, lines 5-20. The further limitations of the claims are disclosed through out the applicant's own reference. Claims 2, 4-13 differ from the reference in that they are

to a method of increasing the rate of thermal inactivation of a pathogen in a nutriment (food). However, as above, the reference to Canning, in particularly, discloses that acidulents are used to decrease the processing time when canning goods. Heat is always used in canning. Also, Kemp et al. disclose that when the composition is heated that the pH of the composition goes down, giving the potential of the composition to destroy microorganisms when heated (page 29, lines 5-15). Therefore, it would have been obvious to one of ordinary skill in the art to increase the rate of thermal inactivation of a pathogen in a nutriment (food) because the instant claims are to an acidulant.

Claim 33 is to chilling a nutriment with an acidulant and claim 34 is to a particular acidulent. Kemp et al. disclose the use of ground beef as in claim 35. Ground beef is usually kept cool before and after it is processed (page 40, lines 15-33). Nothing new is seen in adding the acidulent to frozen foods as in claim 36 for its known function of preservation, which is the function of acidulents. It is well known that bacteria cannot grow below a pH of 4.5. Therefore, it would have been obvious to add acidulents to frozen or chilled foods.

Claims 37-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kemp et al. '469 as applied to the above claims, and further in view of Guthery (5,234,703).

Guthery discloses a process of killing bacteria on animal carcasses by spraying with a composition, which contains an acid. Then the carcass (nutriment) is put in chiller water (abstract and col. 12, lines 25-30). As the method has been shown as in claim 37, it would fulfill the intended use of increasing the rate of thermal inactivation of

a pathogen or increasing the shelf live of the products as in claim 41, because germs are killed at an early stage. Therefore, it would have been obvious to treat a nutriment with an acidulent to increase the rate of thermal inactivation of a pathogen or to increase the shelf-life of a nutriment.

Kemp et al. disclose as in claim 38 the claimed acidulent. The reference discloses that it can be used as a preservative and in treating plant and animal products, which are heated (page 29, lines 5-15). Therefore, it would have been obvious to use a known acidulent as the acidulent of Guthery because it performs the same function of lowering the pH of the product.

The limitations of claims 39-43 have been discussed above and are obvious for those reasons.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

Hp 10-11-03


HELEN PRATT
PRIMARY EXAMINER